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Docket Room 272
1111 Docket No 92-297

DOCKET NO. 92-297

ALFONSE M. D'AMATO
NEW YORK

United States Senate

WASHINGTON, DC 20510-3202

May 7, 1993

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Congressional Liaison
Federal Communications Commission
2025 M Street, NW
Room 6202
Washington, D.C. 20554

Dear Director:

Because of the desire of this office to be responsive to all inquiries and communications, your consideration of the attached is requested.

PLEASE TRY TO RESPOND WITHIN 4 WEEKS OF YOUR RECEIPT OF THIS REQUEST. YOUR FINDINGS AND VIEWS, IN DUPLICATE, ALONG WITH RETURN OF THIS MEMO PLUS ENCLOSURE, WILL BE APPRECIATED.

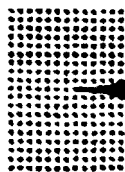
Many thanks.

Sincerely,

Alfonse D'Amato

Alfonse M. D'Amato
United States Senator

AD:amr



YANKEE MICROWAVE, INC.

April 30, 1993

The Honorable Alfonse M. D'Amato
United States Senator
520 Hart, Senate Office Blvd.
Washington, D.C. 20510

VIA FACSIMILE

202-224-5871

Dear Senator:

I am the owner and President of Yankee Microwave, Inc., ("Yankee"), a small common carrier microwave network licensed by the Federal Communications Commission ("FCC") that delivers video programming to cable TV systems in Maine, New Hampshire, Vermont, Connecticut and Massachusetts. Cable systems served by Yankee provide programming to over 100,000 homes with an average of approximately 3 viewers per home. Many of the cable systems served by Yankee are in the northern New England region that has been especially hard hit by the economic recession.

For more than twenty-five years, Yankee has been distributing WSBK-TV, Channel 38, Boston, Massachusetts, as well as several

distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991." See Communications Act of 1934, as amended, at Section 325(b)(2)(D), 47 U.S.C. § 325(b)(2)(D) (emphasis added).

As this exception is written, it covers only superstation signals obtained from a satellite carrier, not from an alternate distribution system such as microwave provided by small common carriers such as Yankee or CARS systems (private cable TV-owned microwave relay systems). As a result of this language, cable systems that receive superstation programming from Yankee's small microwave network are required to obtain retransmission consent, while those systems that switch to satellite delivery of the very same superstations are exempt from the retransmission consent requirement!

Furthermore, cable systems carrying the microwave-fed channel are prohibited under the Act from passing the cost of retransmission on to their subscribers. Cable systems receiving the signal via satellite, however, may chose to offer the signal in a separate service tier and pass on to subscribers the higher cost of satellite versus microwave delivery.

The Act's disparate treatment of microwave and satellite carriers is already affecting Yankee's business and will adversely affect cable subscribers. Several cable systems have notified Yankee they intend to cancel microwave service and switch to satellite delivery of superstations as provided by Eastern Microwave, a large company providing satellite service to portions of New England. Even though satellite delivery is more expensive than microwave, requires the cable systems to invest in additional equipment, and often provides poorer signal quality than microwave, these cable systems are being forced to abandon Yankee's microwave network to avoid the necessity of negotiating for retransmission consent and probably paying significant fees. Furthermore, at least one cable multisystem operator has already indicated it will switch from microwave to satellite delivery, create a new tier for the satellite-fed signals, and pass-on the additional costs to subscribers. This is certainly an anomalous result from legislation designed to promote competition and protect subscribers from rate increases!

There is no rational grounds for the Act's preferential treatment of satellite carriers over such alternate video services such as microwave. Satellite carriers are not in economic distress, nor do they ~~face~~ ^{face} unfair competition from other providers.

To the contrary, satellite services continue to demonstrate strong growth potential in the communications industry. In contrast, microwave carriage has been in severe decline due to increased competition from satellite, fiber optic cable, and other alternate video delivery systems.

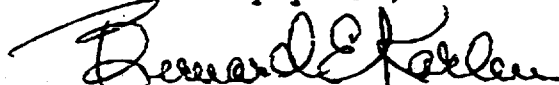
It is possible the language in the superstation exemption requiring delivery by a "satellite carrier" was included without recognition of this devastating impact on microwave, CARS systems, and other video distribution systems. It is also possible the satellite carriers successfully lobbied for this language in the hopes of obtaining an unfair competitive advantage. Whatever the reason for the language, the perverse result will be to eliminate competition for satellite carriers and increase costs to consumers.

While Yankee and other microwave and CARS systems may have a valid Constitutional challenge to the Act as a violation of equal protection, such a challenge cannot prevent the immediate, devastating impact of the statute on my microwave business. As noted above, cable systems are already being forced to abandon microwave delivery of signals, and are unlikely to return to the Yankee network once they have invested in the necessary equipment for satellite reception.

I am asking for your immediate help in bringing this matter to the attention of the FCC. The Commission is currently adopting rules to implement the must-carry and retransmission consent provisions of the Act. Thus far, although the FCC is aware of the perverse affect on microwave carriers of the language of the superstation exemption, it has taken the position the language of the Act precludes it from interpreting that exemption to treat microwave and satellite carriers equally. An indication from you that the statute was not intended to aid satellite carriers at the expense of their competitors could forestall disastrous results for the microwave industry. As the Commission has already adopted its retransmission consent rules, which will assuredly be challenged by several parties requesting reconsideration, it is imperative that Congress act swiftly.

Thank you in advance for your consideration and assistance.

Sincerely yours,



Bernard E. Karlen
President
Yankee Microwave, Inc.

BEK/car